

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BONITA HARMON, et al.,)	CASE NO. 1: 05 CV 575
)	
Plaintiffs.)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
EPPS AIR SERVICE, INC., et al.,)	MEMORANDUM OPINION
)	AND ORDER
Defendants.)	

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 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF OHIO
 CLEVELAND

11-11-06

This matter comes before the Court upon numerous motions. Currently pending before the Court are a Motion for Summary Judgment filed by Business Aircraft Center (ECF # 79), a Motion for Summary Judgment filed by the Federal Reserve Bank of Cleveland (ECF # 81), a Motion for Summary Judgment on the Federal Reserve Bank of Atlanta's Cross-Claim for Contractual Indemnification filed by Epps Air Service, Inc. (ECF # 82), a Motion for Summary Judgment Against Plaintiffs filed by Epps Air Service, Inc. (ECF # 99), a Motion for Summary Judgment filed by the Federal Reserve Bank of Atlanta (ECF # 100), and a Motion for Summary Judgment filed by the Federal Reserve Bank of Atlanta on its Third-Party Claim for Contractual Indemnification Against Epps Air Service, Inc. (ECF # 108).

Also pending before the Court are a Motion to Strike the Reply Brief of the Federal Reserve Bank of Atlanta on the Cross-Claim for Contractual Indemnification filed by Epps Air Service, Inc. (ECF # 142), Plaintiffs' Motion for Leave to File a Surreply to the Federal Reserve Bank of Atlanta's Reply Brief in Support of its Motion for Summary Judgment (ECF # 168), Plaintiffs' Motion for Leave to File a Surreply to the Federal Reserve Bank of Cleveland's Reply Brief in Support of its Motion for Summary Judgment (ECF # 169), Plaintiffs' Motion for Leave to File a Combined Surreply to the Reply Briefs of Business Aircraft Center and Epps Air

Service, Inc. in Support of their respective Motions for Summary Judgment (ECF # 170), and a Motion for Leave to File a Supplemental Brief in Support of the Motion for Summary Judgment filed by Epps Air Service, Inc. on Federal Reserve Bank of Atlanta's Cross-Claim for Contractual Indemnification and Breach of Contract (ECF # 178).


As an initial matter, the Court GRANTS Plaintiffs' Motions for Leave to File a Surreply (ECF # 168, ECF # 169, ECF # 170) and GRANTS the Motion for Leave to File a Supplemental Brief in Support of the Motion for Summary Judgment filed by Epps Air Service, Inc. on Federal Reserve Bank of Atlanta's Cross-Claim for Contractual Indemnification and Breach of Contract (ECF # 178). In addition, the Court DENIES the Motion to Strike the Reply Brief of the Federal Reserve Bank of Atlanta on the Cross-Claim for Contractual Indemnification filed by Epps Air Service, Inc. (ECF # 142). The Court has thoroughly considered the entire record before it and, after setting forth the appropriate standard of review, provides its ruling on the remaining motions.

Summary judgment is appropriate when the court is satisfied "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). A fact is "material" only if its resolution will affect the outcome of the lawsuit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Accordingly, proper summary judgment analysis entails "the threshold inquiry of determining whether there is the need for a trial — whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Id.* at 250. It is with these standards in mind that the instant Motions must be decided.

Based upon a thorough review of the briefs submitted by the parties, as well as the

materials submitted in support thereof, the Court finds that genuine issues of material fact exist which make summary judgment inappropriate in this case. Accordingly, the Motion for Summary Judgment filed by Business Aircraft Center (ECF # 79) is DENIED, the Motion for Summary Judgment filed by the Federal Reserve Bank of Cleveland (ECF # 81) is DENIED, the Motion for Summary Judgment on the Federal Reserve Bank of Atlanta's Cross-Claim for Contractual Indemnification filed by Epps Air Service, Inc. (ECF # 82) is DENIED, the Motion for Summary Judgment Against Plaintiffs filed by Epps Air Service, Inc. (ECF # 99) is DENIED, the Motion for Summary Judgment filed by the Federal Reserve Bank of Atlanta (ECF # 100) is DENIED, and the Motion for Summary Judgment filed by the Federal Reserve Bank of Atlanta on its Third-Party Claim for Contractual Indemnification Against Epps Air Service, Inc. (ECF # 108) is DENIED. This case shall proceed to jury trial at 8:30 a.m. on January 16, 2007.

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: November 30, 2006